

WASHINGTON UNIVERSITY LAW QUARTERLY

Volume XXVII SUMMER ISSUE, 1942

Number 4

SEVENTY-FIVE YEARS OF LEGAL EDUCATION AT WASHINGTON UNIVERSITY

TYRRELL WILLIAMS†

This article is written by a graduate of Washington University School of Law who has been a full-time member of the faculty since 1912. No apology is offered for a somewhat parochial approach. It is believed that a study of what is parochial in the case of any American law school after it has survived for seventy-five years, will lead toward a broad, a comprehensive, a national view of American legal education.

Names

The year 1942 marks the seventy-fifth anniversary of the founding of our Law School. On February 22, 1853, the General Assembly of Missouri, by special legislative act, granted a charter to Eliot Seminary as an educational institution.¹ The name Eliot was selected by Wayman Crow, a member of the General Assembly, who drafted the charter, because William Greenleaf Eliot was already selected as the President of the proposed institution. Four years later the charter was amended by the General Assembly so that full university powers could be assumed by the new corporation, and the title "university" was substituted for "seminary."² The enlarged institution might well have been called Eliot University. However, the President, with characteristic modesty, protested and insisted that the name "Washington" be

† Professor of Law and Madill Professor of Contracts, Washington University.

1. Laws of Mo. 1852-53, p. 290.

2. Laws of Mo., 1856-57, p. 610. That provision of the original charter which grants to the University an exemption from taxation has been the subject of much litigation. For a recent case, with citations of earlier cases, see *Gorman v. Washington University* (April 27, 1942) 62 S. Ct. 962.

substituted for "Eliot," partly because the original charter was granted on Washington's birthday and partly because the name "Washington" seemed to indicate the public aims of the institution.³

In 1867 the University formally adopted a carefully-prepared ordinance which was actually drafted at the southeast corner of Pine and Third Streets, in the chambers of Samuel Treat, United States District Judge for the Eastern District of Missouri, and one of the original members of the Board of Directors of the Corporation.⁴ This ordinance of 1867 established our Law School and officially designated it as the Law Department of Washington University. That was the first official name of our School. At that time Washington University was not particularly well known outside of St. Louis; very few American law schools were connected with universities; normal legal education, theoretically and practically, was obtained from the bench and bar of some particular city, either through the apprentice system or through a local law school. At this period St. Louis University did not maintain any law school and had no immediate plans for establishing a law school. The promoters of our School, in those steamboat days, expected to attract students to St. Louis for the study of law from various points up and down the Mississippi River and its tributaries. For all these reasons the faculty of our School, before its doors were opened, adopted as a matter of convenience the unofficial designation, St. Louis Law School, which very soon became the popular name for the School.⁵ All

3. It is to be hoped that some day the General Assembly of Missouri will change the name to Eliot University, so as to avoid confusion with George Washington University, the University of Washington, Washington and Lee University, Washington and Jefferson College, and Washington College of Law.

4. Treat papers, unpublished, Mo. Hist. Society, St. Louis.

5. "St. Louis Law School" was the name given to an institution, on paper, incorporated by the General Assembly of Missouri by a special act, approved January 14, 1860. Laws of Mo., Adjourned Session, 1859-60, p. 242. The incorporators were William C. Grover, John N. Richardson, Samuel M. Breckinridge, John R. Shepley, James R. Lackland, John M. Krum, and Charles D. Drake. These gentlemen were prominent and public-spirited members of the St. Louis Bar, and in planning a law school were undoubtedly actuated by altruistic motives. Probably because of political and military turmoil, nothing was done in the way of exercising the corporate franchise of 1860, and in 1867 it was evidently looked upon as non-existent, together with the right to the school name. It is certain that the act of 1860 was known to the faculty of our School in 1867. One of the incorporators of 1860, John M. Krum, was a member of our faculty from 1868 to 1878, and was also a charter member of the Board of Washington University.

the catalogues, announcements, and other official literature of the institution in this period used "St. Louis Law School" and "Law Department of Washington University" as interchangeable terms.

In 1908 our sister University on Grand Avenue established a law department and, in order to avoid confusion, graciously gave it the title, "St. Louis University Institute of Law." Shortly afterwards, in the same year, Washington University, by formal action of its Board of Directors, changed the name of our School from Law Department of Washington University to Washington University Law School and discouraged all future use of the term, St. Louis Law School. This latter term is now important only as a matter of history. In 1918 the Board of Directors, by official action, again changed the name to Washington University School of Law. Thus, during the seventy-five years of our School's existence, it has had one popular name, The St. Louis Law School, and three official names, Law Department of Washington University, Washington University Law School, and Washington University School of Law.

Homes

In the seventy-five years of its history, our School has had six separate homes. The first home, formally opened on October 16, 1867, was at the southwest corner of Seventh and Chestnut Streets, where the Title Guaranty Building now stands. On this site, then owned by the University, there was also operated as a department of the University the O'Fallon Polytechnic Institute, the forerunner of our Engineering School. The Law School in 1871 moved to its second home, at the southwest corner of 17th and Washington Avenue, where for seven years it occupied the east end of the second floor of a large brick building, officially known as Washington University Hall and popularly known as The College.

From 1878 to 1906 the home of the School was at 1417 Locust Street, where the Young Women's Christian Association Building now stands. The old brick building, formerly on this site, was originally erected for Mary Institute⁶ which moved further west just before our School took over the property, and for the first time our School had one building for its exclusive use.

6. This preparatory school for girls was established by the University in 1859.

In 1906 the School moved to the southwest corner of 29th and Locust Streets, the old St. Louis Club Building,⁷ which the University had purchased for the use of the Law School, and then added a fire-proof annex in the rear to house our collection of books which at that time included all the official state reports, most of them first editions.

In 1910 the School was transferred to the main campus and placed in the Ridgley Library Building, occupying the north third of the ground floor and all the second floor. This building was erected just before the World's Fair of 1904 and was one of several buildings leased to the Louisiana Purchase Exposition Company at a substantial rental. Of course it was fireproof.

In 1923 the Law School moved to its present home, January Hall, erected expressly for its own use, at a cost of \$285,000, supplied by Miss Isabel January, afterwards Mrs. Robert Brookings, as a memorial to her mother, Mrs. Grace Vallé January. This building was originally designed in the early years of the century by Cope and Stewartson of Philadelphia, the official architects of the University in those days. When the building was actually erected, the University's architect was James P. Jamieson, of St. Louis, who had been associated with Cope and Stewartson as a young man in Philadelphia and with them shares the credit for reviving the collegiate Gothic style in this country.

Deans

From 1867 to 1881 our Law School was under the official control of Henry Hitchcock as dean or provost.⁸ Hitchcock's influence will be discussed *infra*.

Hitchcock was succeeded by William G. Hammond, an Amherst graduate who, apart from three years as a student of law and history in Europe and five years as a young practicing lawyer in Brooklyn, spent all of his professional life in Iowa and Missouri. He was the founder of the Law School of the University of Iowa and was the first full-time dean of our School. He died in 1894. Twenty-seven years afterwards the Carnegie Foundation for the Advancement of Teaching referred to Hammond as "the leading western authority on legal education."⁹ Thirty-

7. This building is now The Thomas Dunn Memorial Home for Boys.

8. Provost from 1872 to 1878, during which period the nominal dean was George M. Stewart. The office of dean was subordinate to that of provost.

9. Reed, *Training for the Public Profession of the Law* (1921) p. 461.

eight years after his death the Dictionary of American Biography said that in his day he was "probably the most eminent authority in America on the history of the common law."¹⁰ While not so well known as Langdell of Harvard, and far less influential in the field of pedagogy, some are inclined to believe that Hammond did more in elevating the minimum requirements for admission to the bar than any other American educator, although much of the good was not apparent until after his death. As Chairman of the American Bar Association's Committee on Legal Education and Admissions to the Bar, in the five years from 1889 to 1894, he was chiefly responsible for official reports which now read like prophecies of what actually happened in the twentieth century.¹¹

For twenty-one years after the death of Hammond, the dean of the School was William S. Curtis, a graduate of the College of Washington University and of our Law School. At the time of his appointment a practicing lawyer in Omaha, Dean Curtis became a leader in legal education as conducted by universities and with others was instrumental in forming, under the auspices of the American Bar Association, the Association of American Law Schools of which our School has been a member since it was organized in 1900. In the early years of this century the operation of so-called night law schools in large cities was a profitable industry and some metropolitan universities conducted such law schools. There was a movement among friends of Washington University, some of them members of the Corporation or officers of administration, to turn our School into a night law school so as to increase the revenues of the University. Dean Curtis vigorously and successfully opposed this movement. At about the same time, after direct personal contact with Dean Curtis, Robert Brookings, the wise, generous and dominating President of the corporation, became a friend of legal education and a public advocate of a more intimate relationship between the study of social sciences in colleges and training for the public profession of law in law schools.

When Dean Curtis retired in 1915, he was succeeded by

10. Vol. 8 (1932) p. 211. See also Memorial, (1894) 17 A. B. A. Reports 511.

11. For high praise of one of these reports, uttered spontaneously by Judge John F. Dillon and stenographically preserved, see 14 A. B. A. Reports (1891) 49.

Richard L. Goode, who like his predecessor was a man of wide general culture as well as a thoroughly competent lawyer. He had been a member of the St. Louis Court of Appeals for twelve years and a part-time member of the faculty for four years before his selection as dean. He remained as dean for eleven years except for a period of about twenty-two months when, practically, he was loaned to the Supreme Court of Missouri.

Forced to resign because of ill health, Judge Goode was succeeded as dean by William G. Hale who had received his legal training at Harvard and came to us with wide experience as a law school teacher and administrator. Under his guidance our scholastic standards were elevated and the library's size and usefulness were greatly increased. A native of the Pacific coast, Dean Hale resigned in 1930 to become dean of the College of Law of the University of Southern California, and was succeeded in the deanship of our School by Wiley Rutledge, now a member of the United States Court of Appeals for the District of Columbia, who had proved his usefulness as a teaching member of our faculty since 1926. Educated in law at the University of Colorado when Herbert S. Hadley, afterwards our Chancellor, was a professor of law there, he was referred to by Hadley in 1926 as "the most promising student I ever had." In 1936 Joseph A. McClain, Jr., became dean and it is the hope of all friends of Washington University that he will long remain in that position.

American Bar Association Standards

In 1921, after many years of study, deliberation, debate and controversy, the American Bar Association adopted its present policy of supervising American legal education to the extent of setting up certain minimum standards for law schools, and announcing its approval of schools which meet those standards and withholding its approval of schools which do not meet those standards.¹² According to the American Bar Association, the chief factors in evaluating law schools are (1) minimum pre-legal education required for admission to the school, fixed at two academic years of college work; (2) minimum period of professional instruction in the law school course, fixed at three academic

12. (1921) See 46 A. B. A. Reports 37-47. For "interpretations" see A. B. A. *Annual Review of Legal Education for 1936*, p. 73, and A. B. A.'s *Choosing a Law School* (1940) p. 4.

years; (3) minimum number of books in the library, fixed at 7,500; and (4) minimum number of full-time teachers in the faculty, fixed at not less than three and one additional teacher for every 100 students above 300. (We have never had as many as 300 students at one time.) Our School complied with all these standards before they were enforced by the American Bar Association. However, as in the case of many other American law schools, the reaching of these standards was a gradual process. Even a high-school education was not an absolute minimum for entrance to our School until 1901. In 1909 one year of college work was required. In 1920 a prerequisite of two years of college work was decided upon and announced.

The length of our law course was two years up to 1904, when it was extended to three years.¹³ In 1900 the number of required classroom hours each week was ten, and this was extended to thirteen in 1915.

The Association of American Law Schools has standards for all its member-schools somewhat higher than the standards of the American Bar Association, and of course our own rules keep us in harmony with the Law School Association as well as with the Bar Association.

The record of our School in regard to the adequacy of its library deserves treatment in a separate essay. Many of our most valuable possessions in the field of legal literature are gifts from alumni and other friends of the School. When the Association of American Law Schools was established in 1900, our library consisted of 8,000 books. In 1921, when the American Bar Association recognized 7,500 volumes as indicating an adequate library for a law school, our collection numbered about 22,000. At the present time (May, 1942) the total number of our books is 53,304. In a few years there will be a serious problem due to lack of shelving space.

For budgetary reasons only, there was no full-time member of our faculty until 1881, when Dean Hammond took up his duties, devoting all his time to the welfare of the School. Although a member of the bars of New York and Iowa, Dean Ham-

13. No description will now be given of our optional four-year law course, which has been abandoned temporarily because of the war. For an outside view of our four-year course, see Currie, *The Law School as an Educational Institution* (1939) 24 WASHINGTON U. LAW QUARTERLY 476.

mond never practiced law in Missouri and indeed never became a member of the Missouri Bar. The number of full-time teachers was increased to two in 1902. The number was increased to three in 1906, and to four in 1912. Thereafter the number of full-time teachers was gradually increased until it became nine in 1938.¹⁴

Three Men and Three Traditions

Many different men have been responsible for the upbuilding of our School. At the beginning and throughout the first decade and a half following, there were three men whose experience, devotion, enthusiasm and generosity were the chief factors in establishing the School. If we were interested only in the history of our own School, it would be sufficient merely to name these men. It happens, however, that each one of these three men typifies historically a distinctive tradition in American civilization, and these three distinctive traditions have finally influenced, not only our School, but that larger thing, that more important thing, standardized legal education as it now exists in the fifth decade of the twentieth century. These three distinctive traditions are worthy of study in every part of the country without regard to the local history of our own School or any other particular law school. These distinctive traditions are (1) the judicial tradition; (2) the tradition of the practicing lawyer; and (3) the university tradition. In the history of our own Law School the judicial tradition is represented by Samuel Treat. The tradition of the practicing lawyer is represented by Henry Hitchcock. The university tradition is represented by William G. Eliot. Each one of these three gentlemen was a distinguished citizen of St. Louis, largely but not exclusively known for constructive helpfulness in the field of legal education. Each one is the subject of a sketch in the *Dictionary of American Biography*.¹⁵

The Judicial Tradition

The function of courts includes several duties. One is the duty of deciding human controversies. From a social viewpoint this

14. Three of them are now (May, 1942) on leaves of absence.

15. Other deceased former members of our faculty sketched in the *Dictionary of American Biography* are James O. Broadhead, Herbert S. Hadley, William G. Hammond, Nathaniel Holmes, Frederick N. Judson, John W. Noble, and Amos M. Thayer.

is the most important judicial duty. But it is not the most important judicial duty from the viewpoint of legal education. From the viewpoint of legal education the duty of stating reasons for the decisions of novel and unprecedented human controversies is more important. "Judges know how to decide a good deal sooner than they know why."¹⁶ More than a century ago a brilliant young English lawyer showed clearly the dependence of common-law education upon the judicial tradition when he used the following language:

The successful lawyer must go at once to the fountain head, and draw his knowledge from the reports * * * When this course has been slowly but perseveringly followed for two or three years, when one case is called up to illustrate and confirm another—when between two cases apparently similar, refined but substantial distinctions are taken—when the principles of the law are thus philosophically and cautiously raised from the details of the law—when the restless roving mind is thoroughly inured and broken in to labor, then the young lawyer begins, as it were, to feel his feet. Soon what was laborious and irksome becomes natural, pleasant, delightful.¹⁷

In this country Langdell of Harvard deserves much credit for improving pedagogy by inventing the case book and thus making it possible for a large group of students to study judicial opinions at first hand instead of merely studying a commentary or a set of lectures on the cases. Even those earlier teachers who accepted the Blackstonian theory that law exists independently of the cases, paid tribute to the judicial tradition, because they all agreed that for us the earliest and best evidence of law is the decisions of the judges and the reasons given for those decisions.

Another judicial duty of profound importance in legal education is the duty of controlling admission to and exclusion from the privilege of practicing law. The duty of admitting to the bar has always belonged to the judiciary. Practically, the duty was generally performed up to the end of the nineteenth century in a lax and nonchalant fashion. So long as the power to admit candidates to the bar was lodged in every trial court of general

16. Holmes, *Book Notices*, etc. (1936) p. 90. This wisecrack was formulated by Holmes in 1871.

17. Byles, *A Discourse on the Present State of the Law of England* (1829), quoted in Reed, *Training for the Public Profession of the Law* (1921) p. 372.

jurisdiction, there was almost no effective control at all. Now there is real control. The duty of examining and recommending candidates for admission to the bar in every state of the Union now belongs to one central tribunal in that state, which in nearly every instance is controlled by the Supreme Court of the state.¹⁸ This great change, not in theory but in practical effect, has come in the twentieth century and much of it since the first World War. The judicial duty of controlling the bar is a part of the judicial tradition. With respect to the important matter of bar examinations and the privilege of practicing law, there is a constant and vital relation between the judicial tradition and modern American legal education.

Is the governmental power to influence legal education by controlling bar examinations ultimately a legislative power or a judicial power? That question is still unsettled in American jurisprudence. The better view would seem to be that statutes regulating bar admissions will be enforced by the courts so long as those statutes are helpful in the administration of justice. But the judiciary has concurrent power in the same field and can prescribe rules more drastic than the existing statutes. This is certainly the Missouri view. A comparison of an unrepealed statute of Missouri,¹⁹ setting forth rather low minimum educational requirements for applicants for admission to the bar, with a certain rule of the Supreme Court,²⁰ effective since November 1, 1934, will indicate that in Missouri the inherent power of the judiciary to admit attorneys and to control their educational preparation is a governmental fact. A futuristic rule of court was promulgated. It has been enforced. It is more drastic than the earlier statute. The statute has not been repealed. It exists *pro tanto*. The rule has simply added something to the content of the statute.²¹

18. In a few states graduates of designated local law schools are excused from bar examinations and can be admitted to practice by the courts without further testing. Our Law School once enjoyed the diploma privilege and afterwards, in 1905, joined with the State University in persuading the General Assembly to abolish the privilege. The American Bar Association is on record as opposed to the diploma privilege. See (1921) 46 A. B. A. Reports 38; A. B. A. *Annual Review of Legal Education for 1938*, p. 31.

19. R. S. Mo. 1939, §13317, originally §2 of Act of Feb. 27, 1905 (Laws of Mo. 1905, p. 48).

20. Rule 38-d, printed in each volume of official Missouri Reports since 334 Mo., appendix.

21. For a discussion of concurrent legislative and judicial powers in the

The man who typified the judicial tradition in the formative period of our Law School, Samuel Treat, was a native of Massachusetts who received his A.B. degree from Harvard College in 1837. His preparatory work was done in the public high school of Portsmouth, New Hampshire. In later years he boasted that he was the first graduate of Harvard College who received all his pre-college training in tax-supported schools. Harvard graduates before him received their secondary education at private academies, or from private tutors.²² Educated in law by the apprentice system while teaching school in upper New York state, Treat came to St. Louis and was admitted to the bar in 1841. After practicing only eight years he became a state judge and in 1857 was appointed Federal District Judge for the Eastern District of Missouri. His most important judicial work was in admiralty, then an important branch of jurisprudence because of the expanding industry of steamboat navigation on western rivers. In those days admiralty and maritime law constituted a required course in our School and this course was for many years conducted by Judge Treat. His formal address at the inauguration of our School, October 16, 1867, was published in pamphlet form at the time and reprinted 56 years later under a new title, "A Nineteenth Century View of the Study of Law."²³ Other biographical details can be found in the *Dictionary of American Biography*.²⁴

The Tradition of the Practising Lawyer

The tradition of the practicing lawyer as it affects legal education is not the same thing as the judicial tradition. Practicing lawyers are interested not only in litigation but also in advisory work—the work of avoiding litigation. Lawyers are more interested in statutes than are judges. Lawyers know more about administrative law than judges do. Lawyers are more critical in their attitude towards established rules than judges are, as well as more useful in adjusting and amending the old rules so

administration of justice, with cases cited, see Williams, *The Source of Authority for Rules of Court*, etc. (1937), 22 WASHINGTON U. LAW QUARTERLY 459, 473-482.

22. Treat Papers at Mo. Hist. Society, St. Louis.

23. (1923) 9 ST. LOUIS LAW REVIEW 23. The address exhibits a Blackstonian devotion to the common law, including common-law pleading.

24. Vol. 18 (1936) p. 634.

as to bring them into harmony with the current and changing needs of society. If it were not for the tradition of the practicing lawyer, legal education would be dead and barren, like the old philosophies in China.

In the 150 years of our national existence, there have been three types of legal education. These are (1) the apprenticeship type, (2) the type furnished by independent law schools, that is, independent of universities, and (3) the type furnished by university law schools. So far as the first two of these types of education are concerned, they grew up entirely within the ranks of practicing lawyers.

The apprenticeship type of legal education was the prevailing type until after the Civil War.²⁵ Down to seventy-five years ago nearly all great American lawyers were educated by this system—Hamilton, Burr, Kent, Story, Wirt, Webster, Benton, Clay, Lincoln, Douglas. Many deservedly eminent twentieth-century lawyers were educated by this method. Among this writer's personal friends, some dead, some living, who were educated in this way may be named Amos M. Thayer, Richard L. Goode, Frederick W. Lehmann, O'Neill Ryan, and Lon Hocker, Sr., of the St. Louis Bar, Frank E. Atwood of the Jefferson City Bar, and Silas Strawn of the Chicago Bar. This type of education is still authorized by statutes or rules of court in 25 states, including Missouri and Illinois. Practically, the system is almost obsolete. Apparently nobody cares for the system today under existing conditions. However, it produced excellent results in former generations, and has left many permanent effects on legal education, and one is the requirement of the American Bar Association that each approved school "shall have among its teachers a sufficient number giving their entire time to the school to ensure absolute personal acquaintance and influence upon the whole student body."²⁶

The second type of bar-controlled education is that furnished

25. The word apprenticeship is used as a term of convenience. Seldom, if ever, were there formal indentures. The young man would "read law" in the older man's office. Sometimes he lived in the older man's home (as did Frederick W. Lehmann). In certain states the statutes or rules of court required the young man to be "registered" as a "clerk." Sometimes the young man was paid money, sometimes the older man was paid money, but generally no money passed.

26. (1921) 46 A. B. A. Reports 38; Rogers, *The Standard American Law School*, A. B. A. *Annual Review of Legal Education for 1936*, p. 10.

by the independent law schools. At the end of the eighteenth and beginning of the nineteenth century in Massachusetts, New Hampshire, and some other states, law schools were impossible because rules of court or of the bar prohibited any one lawyer from giving instruction to more than three students at one time.²⁷ No such rules existed in Connecticut. The first distinctly professional law schools started in that state. Litchfield Law School was organized in 1793 and functioned successfully for forty years.²⁸ The restrictive rules of court or of the bar were abrogated and many schools of the Connecticut type were organized in various parts of the country. They were independent proprietary professional schools evolved from the apprentice system of legal education. Most university law schools, down to the Spanish War period, were conducted very much like the private schools, although legally the control was in a university and not in an independent corporation or group of proprietary lawyers.

Although now generally approved by the legal profession, the university law schools for many decades were looked upon as intruders and trouble-makers. Thirty-five years ago legal education in this country was in a chaotic condition. There was bitter controversy. Partisans of the different types of education were vociferous and intolerant.²⁹ There was also much dispute about methods—case-book system, text-book system, lecture system, eclectic system. By 1913 conditions were worse rather than better. Commercialism was influencing many schools, not excepting certain university schools. Then something happened. It was the most important thing that ever happened to American legal education. The initiative came from practicing lawyers.

On February 7, 1913, the American Bar Association's Committee on Legal Education and Admissions to the Bar formally requested the Carnegie Foundation for the Advancement of Teaching to make a survey of American legal education and methods of admission to the bar.³⁰ One of the five representatives

27. Reed, *Training for the Public Profession of the Law* (1921) pp. 128-129.

28. Some schools further south are said to be older. But their subjects were like what we would now call pre-legal subjects rather than truly professional subjects.

29. For a recorded debate involving the merits of office training alone as a form of legal education, see (1911) 36 A. B. A. Reports 638-661.

30. (1913) 38 A. B. A. Reports 475-476; Reed, *Training for the Public Profession of the Law* (1921) Preface, p. xviii.

of the American Bar Association who signed the communication was a graduate of our School, Selden P. Spencer, '86.³¹ The President of the Carnegie Foundation, to whom the communication was addressed, was a native of Missouri and for 14 years was professor of astronomy in Washington University—Henry S. Pritchett.

The Carnegie Foundation responded to the American Bar Association's request by establishing a bureau of legal education which functioned until 1940, in charge of Alfred Z. Reed, who became the best-informed man in the world on American legal education. Beginning in 1914 and continuing until 1940, the Carnegie Foundation published more than 2200 pages of reports, statistics, criticisms and suggestions—all relating to legal education. Its most important publication is *Training for the Public Profession of the Law*, by Mr. Reed, a work of more than 500 pages, distributed widely and gratuitously in 1921.

As a result of Mr. Reed's wise and tactful handling of a delicate situation, an entirely new set of standards has been set up for evaluating the different factors in legal education. Very little attention is now paid to classroom methods or to the practical or theoretical experience of the teachers. Attention is paid to whether the law school is designed primarily for full-time students or part-time (employed) students, whether it is operated for profit, whether it occupies its own building, the size of the library, the amount of money spent for new books each year, the number of full-time men (non-practicing lawyers who can advise students informally) on the faculty, the requirements for admission to the school, and the length in classroom hours of the law course.

Eight years after the American Bar Association's profoundly important request for a survey of legal education by an outside agency, the American Bar Association adopted in the main the Carnegie Foundation's methods of testing legal education, set up certain standards, as stated above, and announced to the world that the only kind of legal education to be approved by the American Bar Association was the kind of education supplied in law schools complying with these standards.

Of course there are still many law schools (77 in 1940) that

31. He was an A.B. of Yale, 1884, and United States Senator from Missouri at the time of his death in 1925.

are not approved by the American Bar Association, most of them money-making, night law schools in large cities. In 20 states (but not in the other 28 states or in the District of Columbia) their graduates can take bar examinations. In 1940, 35 per cent of American law students were in unapproved schools and 65 per cent in approved schools.³² It should always be remembered that the American Bar Association has no governmental power and can get results only by educating professional and public opinion. It has been trying to do this, very patiently, since 1878.

At the present time, perhaps, there is a tendency to underestimate the significance of the educational work of practicing lawyers who were part-time teachers in law schools of the nineteenth century, whether those schools were independent or university schools. It is misleading to liken those men to practicing lawyers who teach in money-making metropolitan night law schools of today. The actuating motive was quite different. In the nineteenth century the actuating motive was not primarily to enable young men to pass bar examinations. Bar examinations were easy. The actuating motive was to improve legal education in America. It was largely through the influence of those men that the law school was substituted for the apprentice system as the standardized method of acquiring a legal education; that the law school course was extended from one year to two and afterwards to three; that the duty of examining for admission to the bar was taken away from *nisi prius* courts and lodged exclusively in some tribunal appointed by the highest appellate court; that the lecture was discredited as the fundamental method of classroom instruction in law schools; that written examinations were introduced in law schools and also in the paid tribunals for conducting bar examinations. Those men had a lasting belief that legal education is an essential factor in the maintenance of justice. Finally, it was due to the influence of eminent practicing-and-teaching lawyers in the nineteenth century that the control of many law schools was shifted from lawyers themselves to universities, and that full-time teachers did the fundamental work formerly attempted by part-time men.

Our School during the nineteenth century was fortunate in the kind of practicing lawyers who served on its faculty. Some of

32. A. B. A.'s *Choosing a Law School* (1940) pp. 4-5.

them were faithful, enthusiastic and successful teachers for decade after decade. Would they have retained such a connection with the School if there had not been an entire absence of that peculiar odor which attaches itself to a money-making law school, whether the money be made for a proprietary lawyer or for a poverty-stricken university? From the beginning our School has been a charity school. The School could not have maintained its record of always supplying to students more than they paid for, without the generosity of St. Louis lawyers in earlier decades, who gave not only time and books, but also money. During the past seventy-five years former part-time members of our faculty have given or bequeathed to Washington University for the segregated endowment of our Law School more than \$250,000.

In the history of our School the tradition of the practicing lawyer is typified by Henry Hitchcock. He was born in Alabama and educated culturally at the University of Nashville and at Yale. He received his legal education in law offices at Nashville and then was admitted to the Missouri Bar in 1851. He never served on the bench but was an eminently successful practicing lawyer and was elected president of the American Bar Association in 1889.³³ His public but futile protest against the use of "eminent domain" for the "private gain" of railroad promoters was quoted with approval in Bryce's *American Commonwealth*. In 1927, twenty-five years after his death, Yale University published "Marching with Sherman," based upon Hitchcock's diary and letters written while serving with the rank of major as General William T. Sherman's legal adviser in Georgia and South Carolina. Other biographical details and references to additional publications can be found in the *Dictionary of American Biography*.³⁴

The University Tradition

The university tradition had little to do with American legal education until Story became dean of the Harvard Law School in 1829. The late colonial and early republican efforts to establish jurisprudential professorships at William and Mary, Pennsylvania, King's (Columbia) and Harvard were failures. Story reorganized the Harvard Law School along the lines of Litchfield,

33. Two other part-time members of our faculty have been elected Presidents of the A. B. A., Broadhead in 1878 and Lashly in 1940.

34. Vol. 9 (1932) p. 75.

except that there was university affiliation and endowment money, some of it furnished at that time by Nathan Dane, himself a lawyer and author of *Dane's Abridgement*. Only gradually did the advantages of university affiliation become apparent. The chief advantage was and is financial. Any certified accountant will say that the approved university law schools in this country give more value in the education of students than the tuition money furnished by those students. In some law schools the difference is made up by the taxpayers. In other schools it is made up by charitable funds vested in universities. Universities sometimes cut salaries and sometimes discharge janitors and sometimes neglect to rebind law books, but they keep their law schools going, and they never fail to buy the new judicial reports.

Perhaps there has been too much reticence in the matter of financing law schools. At the present time it is impossible to maintain an approved law school without subsidies. The overhead, including rent-value of real estate and use-value of books, will always exceed the totality of tuition fees. If a wealthy graduate of the Harvard Law School does not like the idea of being the beneficiary of charity, he can get even only by giving money to Harvard University. The same is true of our Law School. As early as 1892 the American Bar Association, somewhat timidly (or tactfully) but clearly, condemned any law school that was "conducted for the mere purpose of pecuniary profit."³⁵

It is fashionable in certain circles to criticize trustees, directors and curators of universities. Sometimes they make mistakes. But we should be just and realistic. Most of these men are business men. Their big job is to control property and money. That job they perform pretty well. The fact that they perform the job pretty well helps to explain the near-monopoly that universities now possess in operating approved law schools. People interested in legal education have confidence in those business men and are willing to turn over to them property and money in trust for legal education. In the last eight years Washington University has received for the segregated benefit of our Law School a first edition of Blackstone's Commentaries and \$560,000 in listed securities and money. Would that museum piece of legal literature and those endowment funds have been turned over to

35. (1892) 15 A. B. A. Reports 9.

our School if it were a legally independent institution, not affiliated with and legally controlled by a large university, governed in turn by a board of directors, most of them responsible business men?

There are other advantages in the university tradition when applied to American legal education. Habits of routine and a fairly successful system of discipline have been developed by universities and these have a good effect upon law students. It has always been customary for universities to permit their law students, with the approval of their deans, to take certain college courses without payment of additional fees. Law students are generally eligible for membership in social fraternities, debating and athletic teams, cultural clubs, and other extra-curricular organizations. Of course there is danger here, but there are also advantages obvious to students and their parents. Universities stand for non-legal learning in addition to technical training and this non-legal learning differentiates a true lawyer from a mere craftsman.

In 1840, there were only seven university law schools in the entire country and their students did not aggregate more than 350.³⁶ When our School was organized seventy-five years ago, the majority of lawyers, judges, law students and the parents of law students were opposed to any university control of legal education.³⁷ At the present time the only kind of legal education approved by the American Bar Association is the kind furnished by 98 university law schools and five independent law schools.³⁸ The trend of legal education away from the apprenticeship type and the bar-controlled type of independent law school to the university-controlled type of law school is the most notable fea-

36. Reed, *Training for the Public Profession of the Law* (1921) p. 152.

37. In 9 *Ency. of Social Sciences* 338, after a definite reference to 1857, appears this sentence: "But university training long remained the optional and almost ornamental accomplishment of a small number of lawyers."

38. In a few instances the controlling institution is not called a university, but this is a mere matter of nomenclature. Examples are the College of William and Mary at Williamsburg, Virginia, which controls the School of Jurisprudence, and Dickinson College at Carlisle, Pennsylvania, which controls the Dickinson School of Law. The five independent law schools are Chicago-Kent College of Law, Hartford College of Law (Connecticut), Indiana Law School (Indianapolis), St. Paul College of Law (Minnesota), and Washington College of Law (D. C.). These approved independent schools give instruction at night. For a list of all 103 approved schools, see A. B. A.'s *Choosing a Law School* (1940) pp. 11-14.

ture in the American legal profession during the seventy-five years of our School's existence.³⁹

William G. Eliot typifies the university tradition in the history of our Law School. Although born in Massachusetts, he was brought up in the District of Columbia and graduated with an A.B. from Columbia University, now known as George Washington University. He took a graduate course at Harvard and when only 24 years of age was a minister of religion in St. Louis. He was not only the founder of Washington University, its President until 1870, and then its Chancellor until 1887, but was particularly interested in the University's first professional department, our Law School. The records show that his gift of \$2,500 was the first gift of money to our School and it was all expended in the purchase of books. His wife was a daughter of William Cranch, editor of Cranch's United States Supreme Court Reports (5-13 U. S.). According to the *Dictionary of American Biography*, Eliot was a "political and philosophical liberal" and his chief distinction was the founding of Washington University.⁴⁰

Final Comment

Legal education is one thing. Admission to the bar is another thing. Legal education suggests a private contractual relationship between an older lawyer and an apprentice, or between a group of professional teachers and a group of students. Admission to the bar suggests a governmental status—a combination of privileges and duties. A lawyer after admission to the bar is an officer of the court. The court is a department of the state. However attenuated at times in the past, the process of being admitted to the bar always involves some recognition, some gesture of acknowledgment, that the legal profession is a public profession and that an enrolled attorney is always a representative of the state with an obligation to the public, even when he

39. For an upstream effort to prove that the ordinary type of American legal education is too vocational, and therefore outside the truly cultural tradition of universities, see Hanna, *The Law School as a Function of the University* (1932) 10 N. C. L. Rev. 117. This view has often been expressed by educators of the Ph.D. variety, and one of them was this writer's dear friend, the late Otto Heller, of the Graduate School of Washington University. For a suggestion that the American university tradition has been influenced, to the advantage of teachers, by legal education and the custom of engaging part-time teachers financially independent of teaching jobs, see Reed, *Carnegie Foundation's Annual Review of Legal Education for 1934*, p. 13.

40. Vol. 6 (1931) p. 82.

is also a representative of private clients. Right or wrong, the American Bar Association has always coupled these two things together, legal education and admission to the bar. The two activities have always been studied jointly, as if they present one problem. From its beginning the American Bar Association has had a Committee on Legal Education and Admissions to the Bar,⁴¹ or, in more recent years, a Section on Legal Education and Admissions to the Bar.

Right or wrong, our Law School has operated on the same theory, that legal education for private law students can be improved by elevating the intellectual standards for the public practice of law. Our School has always been in sympathy with the plan of the American Bar Association "for assimilating throughout the Union the requirements for admission to the bar."⁴²

The ideal has not yet been reached. But we are headed that way. When our School was organized, no state in the country had one central board of bar examiners. Bar examinations, when given at all, were haphazard affairs, generally in a trial court and sometimes in the judge's chambers. Now by statute or rules of court, every state in the Union has one central examining board. But each board acts independently of the other boards. Query: should there be official co-operation, or one national board? In 1867 only two states had any requirement for pre-legal cultural experience. Now there are only two states in the Union which do not require some cultural experience. Ten states now require at least a high-school education. Thirty-six states require at least two years of college work. In 1867 very few states prescribed any period of legal training before admission to the bar, and those states which did prescribe a period were generally content with two years. At the present time only four states have no definite period of legal training; six states require at least two academic years of legal training; the other thirty-eight states require a minimum of three academic years.⁴³

41. (1878) 1 A. B. A. Reports 30. Four members of our faculty were charter members of the American Bar Association: James O. Broadhead, Henry Hitchcock, John M. Krum, and Albert Todd.

42. (1878) 1 A. B. A. Reports 26.

43. Data collected from Wellman, *Admission to the Bar*, *Am. Law Review* (1881) 295-330; (1881) 4 A. B. A. Reports 237-304; (1891) 14 A. B. A. Reports 301-360; (1892) 15 A. B. A. Reports 8-20, 317-393; Hanna, *The Law School as a Function of the University* (1932) 10 N. C. L. Rev. 117-157; A. B. A. *Annual Review of Legal Education for 1936*, pp. 37-38; A. B. A.'s *Choosing a Law School* (1940); *Standards of A. B. A.* (1940).